IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 544 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DR.KANTIBHAI AMRATLAL THAKKAR - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR.K.B.ANANDJIWALA for Appellant(s) : 1,
MS.PANDIT, ADDL.PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 18/06/2007

ORAL JUDGMENT

The present Criminal Appeal is field under the provisions of Section 374 of the Code of the Criminal

Procedure, 1973 challenging the legality and validity of the order of conviction and sentence passed by the learned Special Judge, Ahmedabad in Special Case No.17 of 1989, on 24th April, 1992 whereby the learned Judge was pleased to hold the appellant-accused guilty of the charge of offence punishable under Section 161 of the Indian Penal Code and for the offence punishable under Section 5 (1) (d) read with Section 5 (2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the 'Act'). The learned Judge was pleased to sentence the appellant-accused to undergo simple imprisonment for a period of two years and to pay a fine of Rs.1,000/-, in default thereof to undergo simple imprisonment for a period of three months for the offence punishable under Section 161 of the Indian Penal Code and to undergo simple imprisonment for a period of two years and to pay a fine of Rs.1,000/- in default thereof to undergo further simple imprisonment for a period of three months for the offence punishable under Sections 5 (1) (d) read with Section 5 (2) of the Prevention of Corruption Act, 1947.

2. Mr.K.B.Anandjiwala, learned Counsel appearing for the appellant has taken me through the

various grounds mentioned in memo of appeal challenging the judgment and order of conviction and sentence and also through the oral as well as documentary evidence led during the course of trial. Of course, the judgment is assailed on various grounds mentioned in the memo of appeal but Mr.Anandjiwala has concentrated his argument on the point that the finding of the learned trial Judge is not sustainable in the eye of law because the same is based on erroneous appreciation of evidence of prosecution witnesses examined during the course of trial. It is submitted that some crucial important evidence that could have been led by the prosecution, has not been led with reasons best known to the prosecuting agency and by assigning hazy and unconvincing reasons has found the accused the guilty of the charge. Mr.Anandjiwala has pointed out that one very important witness, complainant, Anwar Jiva Sandhi, has not been examined and therefore the prosecution was not even able to get the complaint i.e. F.I.R. exhibited during the course of trial and certain inadmissible part of the Panchnama drawn by the Trapping Officer, has been considered as legal evidence which otherwise could not have been read as legal and admissible evidence in the eye of law.

3. Ms.Pandit, learned A.P.P., for the respondent-State has supported the judgment and order under challenge. She has taken me through the reasons assigned by the learned trial Judge for recording the conviction. According to learned A.P.P., it is not necessary even to examine the complainant. In number of cases where the complainant is not traceable or has expired before recording of his evidence in the Court of law, the Court can record the finding in favour of the prosecution and hold the accused guilty on the strength of the evidence of the Panch Witnesses and Trapping Officer. The learned trial Judge has assigned reasons based on law referring the various decisions that the accused can be convicted on the evidence of Trapping Officer, if the Court, is able to hear the ring of truth in the version of the Investigating Officer / Trapping Officer. Here, the Panch Witness has supported the prosecution case and the muddamal currency notes have been recovered from one portfolio type of pocket, which was lying adjacent to the chair of the accused-appellant. There was no reason for the complainant to falsely implicate the appellant-accused in such a serious offence. It is not necessary that, there must be

some specific conversation between the accused and the complainant prior to the acceptance of the bribe amount. The accused can demand the amount of illegal gratification or bribe amount even by gesture and in the present case it is in evidence that certain gestures were made by the accused-appellant and in response to that gesture the complainant had placed the muddamal currency notes in the portfolio lying near the chair of the complainant. It is satisfactorily proved that the complainant had put the amount to the place because the instructions / suggestion were given by the appellant-accused and therefore the absence of marks of anthracene powder on the clothes of the appellant-accused would not help the accused at all in a given set of circumstances and facts of the case.

4. To appreciate the rival side contentions and same can be taken care of while discussing the arguments in the later part of the judgment, at this stage, it is necessary to state the prosecution case in brief.

4.1 It is the case of prosecution that complainant-Anvar Jiva Sandhi filed a complaint on

25th March, 1985 alleging that the accused is serving as Medical Officer in the Civil Hospital, Ahmedabad and he had met him for treatment of injury sustained by him during the quarrel that had taken place between him (complainant) and one Abbaskhan Suleman and others. In that quarrel, the complainant sustained injuries and therefore he lodged the complaint with Dariapur Police Station, Ahmedabad. Thereafter, the complainant was sent with a Police Yadi to the hospital for treatment and he was examined by the appellant-accused. The appellant-accused was supposed to issue a medical certificate in pursuance of the treatment given to the complainant, indicating the nature of injuries sustained by him. When complainant was taken to the Hospital, the appellant-accused was on duty and complainant had asked for the certificate and at that time the accused told complainant to make the payment, otherwise the certificate cannot be issued and if he wants a certificate of injury in the nature of incriminating caused to him by the other side on his person, he is required to pay Rs.50/- to him. It is alleged that the complainant was not having sufficient amount with him at that time and he requested for time. The accused had asked the

complainant to come to the Hospital in time between 12:00 noon and 4:00 p.m. on 25th March, 1985 and thereafter the certificate will be issued. The complainant was also told that he is supposed to bring Rs.50/- on that day and thereafter only the certificate will be issued. It is further the case of prosecution that as the complainant was not willing to pay the bribe amount / illegal gratification to the appellant-accused, he immediately approached the A.C.B., Ahmedabad and lodged the complaint.

4.2 After recording the complaint, the A.C.B. Inspector, arranged for trap by calling two Panch Witnesses and the muddamal currency notes of Rs.50/- were smeared with anthracene powder and said currency notes were given to the complainant with necessary instructions. The Panch Witness No.1 was also instructed to act as a shadow of the complainant and Panch Witness No.1 was also given some instructions. After drawing the first part of the Panchnama, the trap was arranged and it is alleged that the accused ultimately caught for accepting the bribe amount of Rs.50/- from the complainant at about 3:40 p.m., on 25th March, 1985.

5. To prove the charge, the prosecution has examined two witnesses viz., the Prosecution Witness No.1, (Panch Witness No.1)- Mahesh Chimanlal Patel who is examined at Exh.17 and Prosecution Witness No.2, Kanchanlal Ratilal Jadav, Trapping Officer, who is examined at Exh.23. One Subhash Anandlal Zala was also examined as defence witness at Exh.27. On plain reading of the evidence of these witnesses, it emerges that in reality he is a producing witness, who has produced and proved one Government Resolution issued by the Office of the Director, Health and Service Department, State of Gujarat on 27th September, 1971.

6. On plain reading of the evidence of the Panch Witness examined in the present case, it is clear that the document produced and proved by defence witness would not help the appellant-accused because in the present case it is the say of the prosecution that the accused had accepted Rs.50/- from the complainant and that too in the presence of the Panch Witness No.1 for issuance of certificate and therefore the crucial question emerged, which was required to be addressed by the trial Court was

whether the appellant-accused could have accepted the money in that manner? On reading of the judgment under challenge it is clear that this question has not been either addressed or discussed at all thoroughly by the learned trial Judge. A further question is that what would be the impact and effect of non-examination of the complainant and whether the contents of the complaint could have been ever read or considered while evaluating the evidence of Panch Witness No.1, who has been examined at Exh.17, for want of examination of the complainant?

6.1 As the records and proceedings are before the Court, learned A.P.P., Ms.Pandit appearing for the respondent-State and learned Advocate, Mr.Anandjiwala for the appellant have made all efforts to ascertain the reasons why the complainant was not examined. I have also seen the documents pointed out by the learned Counsel and on perusal of these documents and mainly the summons issued by the Court to the complainant and other prosecution witnesses that the prosecution could have very well examined the complainant but no serious attempts were made by the prosecution or by the Court to secure the presence of the complainant.

6.2 The proceedings drawn in the present case show that the charge against the accused was framed on 31/07/1989. Thereafter, the case was adjourned for various reasons and could not have been taken up for effective hearing and recording of evidence till 26/08/1991. On 26/08/1991, the case was listed for recording of evidence / commencement of trial but ultimately, the same was adjourned on 14/10/1991. On 14/10/1991, the accused had prayed that he should be given time as he intend to change the Advocate initially appointed and therefore the matter was adjourned to 21/10/1991. On 21/10/1991, Mr.Amin has filed his appearance for the accused and at his request the matter was adjourned to 19/12/1991. The proceedings show that actual hearing was fixed on 10/02/1992 and it was ordered that the summons be issued and concerned Police Station may be intimated. Summons was issued in the name of the complainant. Of course, this summons was prepared on 10/11/1991 but ultimately after 19/12/1991, the same was served to the complainant on 13/01/1992. The complainant therefore was under legal obligation to present himself before the Court as a witness in the trial and complainant had appeared on that day but his

evidence could not be recorded for compelling reasons. The Court again issued afresh summons and sent for fresh service. Statements of Mohanlal Chandulal residing near Gebanshah Pir Dargah and Prabhakar Govind Maratha residing in the very locality, reveal that they do not know the person named as Anvar Jivabhai Sandhi. Surprisingly, the process serving Officer has made correction in the statements of these witnesses and has admitted to change the date of statement recorded by him and sent a report that the complainant is not available at the given address and therefore fresh summons should be issued by giving detailed correct address of the witness. If this summons could have been served to this witness, complainant, Anvar Jivabhai Sandhi, he was required to appear before the Court on 16/03/1992 and the corrected date by the Process Serving Officer is the date after 16/03/1992. The report is signed by the Officer on 19/03/1992. The Superior Officer has also corrected the date from 16/03/1992 to 16/04/1992. The process Serving Officer has tried to make figure “nine” at the place of “zero” so that the statement of Mohanlal Chandulal and Prabhakar Govind though actually were recorded on 10/03/1992 but were corrected as 19/03/1992. Thereafter, no attempt was

made to see that fresh summons was issued to the complainant. The Police Commissioner, Rajkot could have been contacted to secure the presence of the complainant because undisputedly the complainant is shown to be resident of Rajkot City.

6.3 From the above set of facts it is clear that the learned Presiding Officer could have issued at least the bailable warrant to secure the presence of complainant and also could have called the Police Officer who was entrusted the duty to serve the process to the complainant because before some days or weeks this very witness was served with the process and was permitted to appear before the Court on 10/02/1992 The Presiding Judge has not even cared to mention about the presence of complainant on 10/02/1992 when the matter was listed for recording of evidence. On that day the complainant could have been again asked to come to Court on subsequent days when this very matter was adjourned for deposition by obtaining signature as it has been done for some other witnesses. Surprisingly that very practice was not followed for this witness, complainant, Anwar. Obviously, a fresh summons was required to be issued and process server, Police Officer submitted a report

which contains that no such person is available in the area indicated in the summons issued by the Court.

7. It is observed by the Apex Court in more than one cases that role of Presiding Officer is crucial in such or similar cases and if the Presiding Officer finds that prosecuting agency is not taking care in serving the process to a particular witness then the Court itself should make all endevour to see that presence of crucial witness is secured and is called for his deposition. In a given case and also under given circumstances, the Court can issue summons suo motu to such witness under Section 311 of the Code of Criminal Procedure and also can take serious steps to see that process is served when the matter has been heard piece-meal. On plain reading of the proceedings it reveals that when no day to day hearing has taken place in the present case, then at least the Presiding Judge ought to have tried to see that presence of complainant is secured even with the help of Higher Police Officer appointed in the area by the Commissioner of Police, Ahmedabad City. This is not a case of dead complainant or a person conveniently not available and therefore the evidence

of the prosecution obviously shall have to be perused in this background, because it is hammered by the learned A.P.P., that the order of conviction should be upheld on the strength of the evidence of Police Inspector, Mr.Jadav and Panch Witness No.1, but, considering the settled legal position, statement of living person could have been recorded but the same cannot be used or read over during the course of trial for any purpose and therefore the Court finds some force in argument of Mr.Ananjiwala that the learned trial Judge ought not to have accepted the words uttered by Panch Witness No.1 as gospel truth.

8. It is true that there is no serious challenge to the first part of the Panchnama drawn by Police Inspector, Mr.Jadav but it is not the say of the prosecution that any member of the raiding party has seen the actual passing of muddamal currency notes from complainant to the appellant-accused nor about the alleged gesture made by the appellant-accused suggesting the complainant to put the muddamal currency notes in the portfolio lying adjacent to chair of the appellant-accused. It is in evidence that one lady doctor was sitting in the room and she has been named and not only that it is in evidence that Police Inspector, Mr.Jadav in response

to the signal received, entered into the room and at that time, whether he had ascertained that the hands of lady doctor was smeared with anthracene powder under the ultraviolet lamp; whether, the Police Officer had ascertained the presence of mark of anthracene powder on the hands of that lady doctor were the questions, not answered.

9. In paragraph 3 of the deposition, Police Inspector, Mr.Jadav has clearly stated that on arrival of Head Constable, Nanalal process of examination of hands under ultraviolet lamp was done and hands of the accused-doctor were examined. His clothes were also examined but no marks of anthracene powder were found. There was no need to see the hands of the lady doctor alongwith the Panch Witness and the complainant. Of course, there is no clear reference in the second part of Panchnama that examination of hands of the lady Dr.Sulochanaben was undertaken under the ultraviolet lamp. But it is possible to infer that those hands which could have been seen and examined by Police Inspector-Mr.Jadav in the normal day light, must have been examined under the ultraviolet lamp. Why the lady Dr.Sulochana was asked to show her hands is the

crucial question. The act of examining the hands of appellant-accused and Dr.Sulochanaben simultaneously in presence of Panch Witnesses after receipt of the signal by Mr.Jadav makes the prosecution case doubtful that either Panch Witness or complainant had intimated Mr.Jadav about the place where the muddamal currency notes were lying. Otherwise, after formal examination of appellant-accused currency notes would have been recovered with the help of Panch Witness from that portfolio. This portfolio is referred as 'Pakit' in the Panchnama. Plain reading of the Panchnama (Exh.18) gives an impression that it is not only the description of the procedure that had taken place firstly in the A.C.B. Office and thereafter in the Emergency Ward where the second part of the Panchnama was allegedly drawn, but it also contains certain statements of Panch Witness No.1 and complainant and it also narrates the conversation of the complainant and Panch Witness No.1 that had taken place with accused-appellant. As such there was no conversation between Panch Witness No.1 and appellant-accused. In absence of evidence of complainant, such part of the Panchnama cannot be said to have been proved legally. Of course, the gesture that were seen by Panch Witness No.1 is a

legal piece of evidence and prosecution can very well rely on it, but whether it was safe for the Court to link the accused with the crime in absence of evidence of complainant especially when he had failed in indicating to the Police Inspector, Mr.Jadav about the place where the muddamal currency notes were lying? It is not even the case of prosecution in Panchnama (Exh.18) that Panch Witness No.1 had informed Police Inspector, Mr.Jadav that the muddamal currency notes have been put in the portfolio of the appellant-accused as per the suggestion of appellant-accused and currency notes were lying there. Otherwise, Mr.Jadav would have deposed accordingly. On the contrary, the experiment of ultraviolet lamp was made on all the persons including the members of the raiding party. The lady Dr.Sulochanaben was asked to sit in her chair by Police Inspector, Mr.Jadav. Her chair was comparatively near to the seat of accused-appellant. Her statement was recorded. There were other persons present in the emergency ward and the persons whose statements were recorded by Mr.Jadav are named by him in her deposition. However, none including lady Dr.Sulochanaben has been examined by the prosecution. The Court is conscious that in A.C.B. Trap cases all

witnesses who are likely to depose the same or similar facts, are not being examined and prosecution can drop all other witnesses, if the evidence led by the complainant and shadow Panch is found sufficient. In the same way if the evidence of shadow Panch and Investigating Officer is found satisfactory then prosecution may not examine all witnesses named in the charge-sheet or whose statements have been recorded during the course of investigation. But, here when the complainant has not been examined and according to the Court and prosecution the complainant was not produced before the Court for examination and then most independent witness i.e., any responsible Government Officer, Dr.Sulochana Munim could have been examined. If it is the say of prosecution that Dr.Sulochanaben might be busy in attending her work and she may not be knowing about the conversation or the alleged talks that had taken place between the complainant and appellant-accused, in absence of evidence of complainant, material part of the evidence of Panchnama could not have been accepted, being hearsay type of evidence, so also, the evidence of Panch Witness. In absence of evidence of complainant, some crucial part of the Panchnama loses significance of substantive admissible evidence

and the Court cannot read certain portion of the evidence of the Panch treating it as hearsay, because the Court is satisfied that the prosecution has conveniently avoided the examination of the complainant. When it is not possible to agree with the submission made by learned A.P.P., that it was not possible to secure the presence of complainant, the Court shall have to ignore the hearsay part of the evidence being inadmissible. The cases of A.C.B. Trap where the complainant if died prior to his deposition in the Court or is not genuinely available and under even after great hardship it is not possible to secure the presence of the complainant, the Courts have taken different view based on cogent and legally admissible evidence but this case does not fall in the category of those cases. Section 6 read with Section 33 of the Evidence Act and the exception also would not help the prosecution in the present case and therefore nothing said or done or otherwise expressed by complainant-Anwar, can be considered as relevant fact.

10. The learned trial Judge while recording the finding has considered certain inadmissible part of the evidence in light of the aforesaid discussion and

therefore such inference and finding cannot sustain in the eye of law. It is true that Court can assume certain things on the strength of legal and admissible evidence and assumptions otherwise have to be ignored. Such assumptions would assume status of a conjecture and surmise.

11. In view of the above said discussion and in absence of the evidence of Dr.Sulochanaben and star witness-complainant, it was not safe for the trial Court to accept the evidence of Panch Witness as gospel truth. It is true that Panch Witness is not a trap witness and reliance can be placed on the sole testimony of Panch Witness, but in cases of present nature where some corroboration was required to be sought, has not been sought by the learned trial Judge and therefore it shall have to be equated with hearsay evidence and it should be held that say of Panch Witness has been erroneously accepted as if proved evidence against the accused.

12. Though one defence witness has tendered one circular referred to herein above in earlier paragraph but this being alternative plea, it would not be either legal or proper for the Court to say

that the accused-appellant had advanced the plea of justification. It would also not be legal to conclude that examination of defence witness and the nature of alternative plea raised can be equated with admission of the appellant-accused about acceptance of amount.

13. It is settled legal position that if say of Police Inspector, Mr.Jadav and also the evidence of Panch Witness about the recovery of the amount from the portfolio of the appellant-accused which was lying adjacent to his chair is accepted, would at the most make the case of mere recovery of muddamal currency note from the portfolio of the appellant-accused. When the complainant was able to put the currency notes in the very portfolio without any special help by the appellant-accused it is possible to infer that the portfolio must be also closer to the complainant where he was sitting otherwise the prosecution would have led the case that the appellant-accused handed over the portfolio to the complainant and asked him to put the currency notes in said portfolio. The say of prosecution is that appellant-accused took out a paper on which the certificate was to be written but the recovery is of four blank paper sheets and not one. This conflict

obviously appears to be a minor but it becomes significant in absence of clarification by the complainant and Panch Witness in this regard.

14. It is settled legal position that on mere recovery of muddamal amount, no presumption can be drawn against the appellant-accused and the learned trial Judge has recorded the conviction mainly on the presumption drawn against the accused. On the contrary, this is a case where it was possible for the trial Court to record the finding that the strong probability which makes the case of prosecution doubtful is emerging and therefore the accused deserves benefit of doubt. According to me, in such or similar cases, the Court cannot raise presumption. Here, the Court would like to place reliance on the ratio laid down in case of **Suraj Mal Vs. State (Delhi Administration), reported in 1979 Cri.L.J. 1087.**

15. Mr.Anandjiwala, learned Counsel appearing for the appellant, has rightly placed reliance that though the facts are somewhat different, the observation made by the Apex Court in case of **Ganga Kumar Srivastava Vs. State of Bihar, reported in 2005**

S.C.C. (CRI) 1424 would certainly help the appellant-accused to some extent. In this cited decision, the plea of the accused was that muddamal currency notes have been planted in the pocket of hanging bush-shirt and he was caught seen as soon as he came out and put on that hanging bush-shirt and certain circumstances were placed before the Court about the scope of planting. In paragraph 20 of the said decision the Apex Court has observed as under:

> *"20. We must not forget that in a trap case the duty of the officer to prove the allegations made against a Government Officer for taking bribe is serious, and therefore, the officers functioning in the Vigilance Department must seriously endeavour to secure really independent and respectable witnesses so that the evidence in regard to raid inspires confidence in the mind of the court and the Court is not left in any doubt whether or not any money was paid to the public servant by way of bribe. It is also the duty of the officers in the Vigilance Department to safeguard for the protection of public servants against whom a trap case may have been laid."*

15.1 Here, such or similar circumstances have emerged because it appears that it was not the modus of accused-appellant to ask everybody to put amount of illegal gratification in his portfolio because

majority amount that was recovered from the appellant-accused was lying in the pocket and from that very portfolio only muddamal currency notes were recovered and no other cash or currency notes were fond. This situation is indicative of innocence of the appellant-accused and not of the guilt. Either it would be legal or proper to draw an inference that the complainant may be the first visitor from whom the appellant-accused had demanded the bribe? Ultimately he was on emergency duty and if he had a tendency to ask money from number of patients then from the portfolio, other currency notes could also have been recovered. This fact makes one point clear that it was not the modus of the appellant-accused of asking bribe amount and to put the amount in his portfolio. That is why whether the plea of planting money should be totally ignored was the question before the trial Court and it appears that the learned trial Judge has ignored the strong probability emerging from the evidence led by prosecution itself. Here, it would be beneficiary to reproduce paragraph 6 of the judgment of the Apex Court in case of **State of Andhra Pradesh Vs. Venkateswara Rao, reported in AIR 2004 SC 1728.** Of

course, the facts of this decision are materially different but the ratio would help the appellant-accused. Paragraph 6 of the said judgment is reproduced herein below.

> *"6. Having heard learned counsel for the parties and having perused the records, we are unable to accept the argument addressed on behalf of learned counsel for the appellant. We think the High Court was justified in coming to the conclusion that the contract for which PW-1 had offered his bid was only under consideration and was not finally accepted therefore, the question of the respondent agreeing to give the work order on payment of bribe did not arise. The High Court was also justified in coming to the conclusion that on 24-4-1987 between 11 a.m. and 1 p.m. respondent was not in his office hence the prosecution case that PWs-1 and 2 approached him in his office on that day to pay the bribe cannot be accepted. The High Court was also justified in coming to the conclusion that no reasonable man would have agreed to accept the bribe in the presence of PW-2 who admittedly had a grievance against the respondent. These findings, in our opinion, are based on material on record and there is no perversity involved in the conclusions arrived at the High Court in regard to these findings. Though learned counsel for the appellant is justified in contending that PWs-4 and 5 are independent witnesses hence their evidence ought not to have been rejected by the High Court, in our opinion the fact that they are independent witnesses ipso facto does not*

establish the prosecution case that the respondent demanded or received a sum of Rs. 400 in the form of tainted currency notes on the said date. Their evidence only establishes the fact that when they entered the house, Rs. 400 was recovered from under the mattress in the best-room of the respondent and on testing the respondent's hand tested positive for having handled the tainted money. The evidence even if it is accepted as true would not lead to an irresistible conclusion that this money was received by the respondent as bribe money because of the explanation given by the respondent wherein it is stated that the money in question was kept in advance by PWs-1 and 2 before his arrival in the house and he was asked to bring that money by PWs-4 and 5 when they came to his house which he did. Because of his handling the currency, he came in contact with the phenolphthalein powder. Bearing in mind the findings of the High Court in regard to the genesis of this bribery demand we think the explanation given by the respondent by way of defence and supported by evidence cannot be rejected as improbable or farfetched."

15.2 In case of **Salimkhan Sardarkhan v. State of Gujarat reported in AIR 1986 SUPREME COURT 307;** the case of prosecution was that finger tips of the accused, recipient of the illegal gratification did not turn rosy when they were put into the mixture. The idea of the prosecution was to establish that the

finger tips were stained with phenolphthalein powder, meaning thereby the endevour of the prosecution was to prove the acceptance of the bribe amount hand to hand and on totality of the evidence the Apex Court refused to reverse the acquittal recorded by the High Court.

16. For short, according to me there is enough strength in the arguments referred herein above advanced by Mr.Anandjiwala that, the finding of guilt recorded by the learned trial Judge is erroneous and the same is based on some inadmissible evidence and on certain conjectures and surmises and the learned trial Judge was not legally correct in drawing the presumption against the appellant-accused and observing that the accused had failed in rebutting the presumption to the satisfaction of the Court.

17. In the result, the present Criminal Appeal is allowed. The judgment and order of conviction and sentence passed by the learned Special Judge, Ahmedabad in Special Case No.17 of 1989, on 21st April, 1992, is hereby quashed and set aside. The appellant-accused is acquitted from the charge of offence punishable under Section 161 of the Indian

Penal Code and under Sections 5 (1) (d) and 5(2) of the Prevention of Corruption Act, 1947. Bail Bond executed by the appellant-accused shall stand discharged. Amount of fine, if paid, by the accused person, be refunded to him on proper identification. No interference is required to be made qua the order passed in reference to muddamal articles. Order and Direction accordingly.

(C.K.BUCH, J.)

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